

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

KIVON D. REDD,	)	
	)	
Plaintiff,	)	
	)	
-v-	)	Cause No.
	)	3:12-CV-70-RLY-WGH
THE CITY OF EVANSVILLE,	)	
INDIANA, MICHAEL R. WARD,	)	
JOHN PIESZCHALSKI and BRAD	)	
HILL or his SUCCESSOR IN	)	
OFFICE AS THE CHIEF OF	)	
POLICE FOR THE CITY OF	)	
EVANSVILLE, INDIANA,	)	
	)	
Defendants.	)	

The deposition upon oral examination of  
MICHAEL WARD, a witness produced and sworn before me,  
Elizabeth A. Taylor, RPR, a Notary Public in and for the  
County of Vanderburgh, State of Indiana, taken on behalf  
of the Plaintiff at the offices of Rhine Ernest, LLP,  
One Main Street, Suite 600, Evansville, Indiana, on  
December 2, 2013, at 1:08 p.m., pursuant to the Federal  
Rules of Civil Procedure.

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<p style="text-align: right;">Page 17</p> <p>1 to your cars. Time to leave. Get off the lot.  2 Just repeat those same commands over and over.  3 Q. I don't know if I should admit this, but there's  4 been times when I've been at a bar when it closes  5 down, and it seems to me it's not that uncommon  6 that it takes a while for everybody to get out of  7 the parking lot. What would you say would be a  8 normal time frame for 100 people or so to get out  9 of a parking lot?  10 A. 15 minutes. 20 minutes.  11 Q. Even in the normal course of things, it would take  12 15, 20 minutes?  13 A. Yeah, I mean, if there was no rush. There's  14 typically some socializing that goes on while  15 people walk to their cars, wait for a cab, those  16 type of things.  17 Q. And there's nothing wrong with that kind of  18 activity; correct?  19 A. Correct.  20 Q. Provided you could identify the combatants in a  21 particular situation -- and I'm not talking about a  22 situation where weapons are involved -- would you  23 typically go address that fight first, whether it  24 was between one -- if it's between two or three  25 individuals, would you address that first?</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. Did you personally see anybody shove anybody?  2 A. Yes.  3 Q. Okay. Could you identify that individual?  4 A. No. There were too many individuals to -- at the  5 point I saw the shoving, I wouldn't be able to  6 specifically.  7 Q. When you first got there to the Scottish Rite, what  8 did you see?  9 A. Lots of people.  10 Q. About how many?  11 A. In the parking lot and in the front of the  12 building, close to 200 people.  13 Q. Okay. When you say in the front of the building  14 and into the parking lot, were people continuing to  15 come from the Scottish Rite itself and into the  16 parking lot?  17 A. Yes. There were people standing in the street.  18 There were people walking both directions to the  19 building, away from the building. It was just a  20 mix of people.  21 Q. Now, of that 200 people, approximately how many  22 were in the area of concern?  23 A. I'd say close to 100.  24 Q. About half of the total crowd?  25 A. Yes.</p>
<p style="text-align: right;">Page 18</p> <p>1 MR. SCHMITT: Objection.  2 A. It would be considered -- I mean, we would take the  3 size of the crowd and other threats that we had to  4 contend with, but I mean, that's where we would  5 focus our attention.  6 Q. Correct me if I'm wrong, but it seems to me that if  7 the wrongdoers are the combatants and there's a  8 crowd around, unless the crowd is doing something  9 wrong itself, your main objective would be to deal  10 with the criminal activity of the fight?  11 A. That would be the end goal.  12 Q. Now, in the Scottish Rite incident, it's my  13 understanding that you guys identified the persons  14 that were being aggressive, is that fair to say,  15 when you arrived?  16 MR. SCHMITT: Objection.  17 A. We could see individuals that were more aggressive  18 than others, yes.  19 Q. How many individuals did you see acting  20 aggressively, would you say?  21 A. Maybe less than six.  22 Q. And did you personally see anybody throwing  23 punches?  24 A. I don't recall any punches. Anything specific as  25 far as that.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. And do you remember where that one area would have  2 been?  3 A. It would have been in the north portion of the  4 parking lot almost directly in the center of the  5 lot.  6 (Plaintiff's Exhibit 1 was marked for  7 identification.)  8 Q. Mr. Ward, could you maybe with a red pen identify  9 the area that you say this specific group of  10 people -- where there was the commotion was  11 located?  12 A. Yes.  13 Q. Just put an "X" will be fine.  14 A. (Witness complied with the request.)  15 Q. Okay. I'll let you keep the red pen because I'm  16 going to ask you to mark a couple things, I think.  17 "X" would note where the combatant crowd was  18 located. Is that fair to say?  19 A. Yes.  20 Q. Now, when you say that -- I guess I said it -- that  21 crowd, was there a big circle of people, or was  22 there ripples of people? How would you describe  23 how the people were assembled there?  24 A. I would say it was a large circle of people. Just  25 -- to me, I remembered seeing two distinct groups.</p>

<p style="text-align: right;">Page 21</p> <p>1 Almost a division. There were less people on the  2 opposite side from where I was standing but more  3 towards the -- what would be the southeast and  4 northwest, larger groups congregated.  5 Q. Northeast?  6 A. Northwest and southeast.  7 Q. Okay. And I think there's room on there to show --  8 if you could write "car," would you show where you  9 parked your car when you approached?  10 A. (Witness complied with the request.)  11 Q. And when you approached, did you guys have your  12 lights and sirens on?  13 A. No.  14 Q. Did you have either?  15 A. I know when we got to the lot, the lights wouldn't  16 have been on, but neither one was on when we  17 approached the lot.  18 Q. And is that consistent with the policies of the  19 department in that type of situation?  20 A. I don't know that there's necessarily a policy that  21 states when lights should be shut off, but that's  22 my standard operation.  23 Q. Okay. You've done that many times before?  24 A. Yes.  25 Q. Nobody has ever disciplined you or chastised you</p>	<p style="text-align: right;">Page 23</p> <p>1 Pieszchalski that was your partner; is that  2 correct?  3 A. Yes.  4 Q. He was just a temporary partner?  5 A. We were working an overtime detail together. We  6 don't typically ride together, but we just were  7 paired up.  8 Q. That's what I meant. Is the slang the bar car, is  9 that --  10 A. Yes, that's what it's sometimes referred to.  11 Q. What is the typical duties of the bar car?  12 A. Patrol areas that -- you know, where crowds gather.  13 Bars, nightclubs are typically where we have a high  14 number of intoxicated people or people that are  15 involved in fights.  16 Q. And is there any expectation if you're called out  17 on a run that you are 99 percent or some high level  18 of the time supposed to make an arrest?  19 A. If there's a felony involved, we don't have  20 discretion, but other than that, if it's a  21 misdemeanor or an infraction, city ordinance, we  22 have discretion. The other misdemeanors where we  23 don't have the discretion would be maybe domestic  24 violence, but typically, for most misdemeanors, we  25 have the discretion.</p>
<p style="text-align: right;">Page 22</p> <p>1 for doing something like that?  2 A. No. It's part of my training in patrol tactics.  3 Q. What would be the purpose of coming in without the  4 lights and sirens on?  5 A. Well, there's several reasons. One of the main  6 reasons is so that we aren't exposed and we're at a  7 position of advantage before we're able to make the  8 determination of what actually is occurring.  9 Q. In hindsight, if you knew what you later  10 discovered, would it have potentially been  11 effective to have the lights and sirens on to  12 disperse the crowd?  13 A. As far as in hindsight knowing what I knew  14 throughout the incident?  15 Q. Yes.  16 A. Possibly.  17 Q. Is that a tactic that you use from time to time is  18 to use the lights and sirens to disperse a crowd?  19 A. Just a crowd, yes.  20 Q. And was your car equipped with a PA system?  21 A. Yes, it was.  22 Q. Is that something you sometimes use to disperse a  23 crowd?  24 A. Yes.  25 Q. And on that particular night, you had an Officer</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. What about a battery? Would you have a discretion  2 in that scenario?  3 A. No.  4 Q. Disorderly conduct would be one that would fit in  5 the discretion area category?  6 A. Yes.  7 Q. Could you explain to me what information you had  8 before you arrived at the Scottish Rite?  9 A. I was given information over the radio that there  10 was a fight, and they had requested for any car to  11 respond.  12 Q. It's my understanding that you just happened to be  13 the closest car; is that right?  14 A. Yes. We were in the area.  15 Q. Were there other patrol cars in the area as well?  16 A. I'm not sure.  17 Q. Did it take long for others to arrive after you  18 did?  19 A. Within minutes. So I mean, I would assume they  20 weren't very far.  21 Q. Do you remember how many units actually ended up  22 coming that night?  23 A. As far as units, sometimes they're a two-man car.  24 I can recall seeing maybe six, seven other officers  25 that night.</p>

<p style="text-align: right;">Page 25</p> <p>1 Q. At most?</p> <p>2 A. It could have been nine at most, but I can remember</p> <p>3 maybe half a dozen off the top of my head.</p> <p>4 Q. Did you and Officer Pieszchalski discuss how you</p> <p>5 were going to handle the situation before you got</p> <p>6 there?</p> <p>7 A. We didn't really have any conversations regarding</p> <p>8 that.</p> <p>9 Q. Okay. Had you worked with Officer Pieszchalski</p> <p>10 before in a bar car situation?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Was it typical for any individual to have a bar car</p> <p>13 assignment? I mean, is it something you did a lot</p> <p>14 or Pieszchalski did a lot or did somebody normally</p> <p>15 take that role?</p> <p>16 A. They tried to distribute it fairly. I mean, there</p> <p>17 was a sign-up sheet, and you would sign up. I</p> <p>18 think at the time the lieutenant took care of --</p> <p>19 maybe if you'd done it four times, another guy</p> <p>20 asked to do it and he'd done it twice, he's</p> <p>21 probably going to get it, but I think they tried to</p> <p>22 evenly distribute the -- since it was overtime.</p> <p>23 Q. About how often prior to this incident had you been</p> <p>24 in the bar car?</p> <p>25 A. I wouldn't be able to put a specific number, but I</p>	<p style="text-align: right;">Page 27</p> <p>1 Scottish Rite, was there any discussion at that</p> <p>2 point who was going to do what?</p> <p>3 A. Not specifically, no.</p> <p>4 Q. To the extent you can remember what communication</p> <p>5 occurred between you and Officer Pieszchalski</p> <p>6 between the time you got there and the time Kivon</p> <p>7 Redd was arrested, could you explain that to me?</p> <p>8 A. The only thing I can remember at this point is just</p> <p>9 discussing on getting more cars to assist us, more</p> <p>10 officers on scene. I think I might have instructed</p> <p>11 him to call for more cars, and I might have</p> <p>12 verified later whether or not he did that. But the</p> <p>13 communication would have been limited to something</p> <p>14 along those lines.</p> <p>15 Q. Was he -- strike that. Did you communicate to him</p> <p>16 in any way that you were getting the OC canister?</p> <p>17 A. I don't remember if I said that specifically or</p> <p>18 not.</p> <p>19 Q. Had you had any communication with him prior to</p> <p>20 that that you did have, in fact, an OC canister?</p> <p>21 A. I don't recall that specifically.</p> <p>22 Q. What was your first thought when you arrived at the</p> <p>23 scene as to what you needed to do?</p> <p>24 A. My first concern was we had a large group, and we</p> <p>25 were outnumbered. My main focus at that time was</p>
<p style="text-align: right;">Page 26</p> <p>1 mean, numerous times.</p> <p>2 Q. And you described events at the Icon on the east</p> <p>3 side sector. Would you characterize what you did</p> <p>4 in the bar car similar to what you typically did on</p> <p>5 a weekend night at an east side or Icon location?</p> <p>6 A. If we were in the bar car, typically we would</p> <p>7 patrol the areas that crowds were known to gather.</p> <p>8 Problem bars. You know, Hammerheads was one that</p> <p>9 sticks out in my mind at the time. That's probably</p> <p>10 why we were close to this area. We were probably</p> <p>11 checking out Hammerheads. But typically we would</p> <p>12 just drive through the areas looking for, you know,</p> <p>13 groups of people standing outside, any kind of</p> <p>14 signs of fights getting ready to start, those type</p> <p>15 of things. Just -- and, you know, other crimes as</p> <p>16 well. We weren't limited to fights and crowds</p> <p>17 only, but if we came upon anything that needed</p> <p>18 police action, we would take it as well.</p> <p>19 Q. But that was the routine occurrence of the bar car?</p> <p>20 A. Yeah. That's the main responsibility. We weren't</p> <p>21 responsible for responding to routine report runs</p> <p>22 throughout the city or anything like that. Our</p> <p>23 main focus was to patrol the crowds and bars,</p> <p>24 problem areas.</p> <p>25 Q. When you and Officer Pieszchalski arrived at the</p>	<p style="text-align: right;">Page 28</p> <p>1 to get more officers there.</p> <p>2 Q. Did you have any emergent need to enter the crowd</p> <p>3 before other officers arrived?</p> <p>4 A. As far as to -- I wanted to get close to that</p> <p>5 group, but as far as getting into the center of it,</p> <p>6 no.</p> <p>7 Q. I mean something a little different than that.</p> <p>8 You're talking about the center of the crowd and</p> <p>9 I'm just talking in terms of the parking lot</p> <p>10 itself, getting into the middle of the mix there.</p> <p>11 A. Yes.</p> <p>12 Q. Is that something that you thought there was an</p> <p>13 emergency for you to do that?</p> <p>14 A. Yes. I needed to -- from the position I was at, my</p> <p>15 car, I could not see clearly what was going on in</p> <p>16 the center of that group, and I needed to determine</p> <p>17 if someone was being injured, you know. I had ten</p> <p>18 things going through my mind that could be</p> <p>19 occurring, and I had to find out if any of those</p> <p>20 things were happening to anyone.</p> <p>21 Q. What is it that you thought was most likely</p> <p>22 occurring?</p> <p>23 A. It appeared to be a fight from that distance to me.</p> <p>24 Q. Could you -- I think you said before you could</p> <p>25 identify certain numbers that seemed to be more</p>

<p style="text-align: right;">Page 29</p> <p>1 aggressive than others. You felt you could  2 identify who the people were that were wanting to  3 fight?  4 A. At this point, no.  5 Q. At that point when you were there?  6 A. Yes. I mean, if it was -- if I was to look at  7 those individuals while I was there, I would have  8 been able to identify them.  9 Q. That's what I mean. And I'm not meaning me to hand  10 you a picture today and say, hey, was this the guy.  11 But in terms of when you were there that night, did  12 you have a good sense of who were the combatants in  13 that situation?  14 A. Yes.  15 Q. And you think there was approximately how many?  16 A. In the tight group itself?  17 Q. What we would call the combatants.  18 A. I saw -- when I said "six," I'm referring to the --  19 there's a couple of aggressors that were being held  20 back by the crowd, and the individuals that were  21 holding back the main aggressors were also shouting  22 at the other group and inciting things to continue.  23 So they're the ones I include in that six number.  24 Q. Okay. That makes more sense to me. So there was  25 two in particular that were being held back?</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. Okay. And about how long after you had been on the  2 scene did that happen?  3 A. Within the first two minutes.  4 Q. Now, when you first arrived and saw this crowd that  5 included the two being separated or pulled apart,  6 what was your priority at that point?  7 A. Just to ensure the safety of everyone including  8 ourselves.  9 Q. Did that primary goal change at any time?  10 A. I think that was primary at all times.  11 Q. The activity that you saw going on in that group,  12 did you see anything that you considered to be a  13 violation of the law, whether it be a misdemeanor,  14 infraction or anything else?  15 MR. SCHMITT: Which group are you talking  16 about?  17 MR. MACER: What I'll call the inner group.  18 Is that fair?  19 MR. SCHMITT: Can we call it like a fight  20 ball?  21 MR. MACER: No.  22 MR. SCHMITT: No?  23 Q. You know what I'm talking about when I say the  24 inner crowd?  25 A. I guess if you refer to it as the crowd in the</p>
<p style="text-align: right;">Page 30</p> <p>1 A. Yes.  2 Q. And did those people have their shirts off, those  3 two individuals?  4 A. I only recall one.  5 Q. And before deploying the pepper spray, was there  6 only one person you saw with their shirt off?  7 A. That I remember focusing on, yes.  8 Q. And is that typically an indication that's one of  9 the people that's wanting to fight or talking about  10 fighting by taking their shirt off?  11 A. That's typically what occurs. I don't know where  12 that came from. It usually makes it easy for us to  13 spot who's intending on fighting because that's --  14 I don't know if it's to save the shirt from being  15 damaged but, you know, that's an action we  16 typically see is when the shirts are removed, we  17 know a fight is imminent.  18 Q. Now, could you identify today who that person was  19 that had their shirt off?  20 A. Yes.  21 Q. Who was that?  22 A. Alordo Bell.  23 Q. At any time did you see the two that were being  24 held back let go or go towards each other?  25 A. Yes.</p>	<p style="text-align: right;">Page 32</p> <p>1 parking lot.  2 Q. Where you marked the "X."  3 A. Yeah.  4 Q. Where you marked the "X." Okay. That's what I'm  5 talking about when I say the inner crowd. Okay?  6 A. Uh-huh.  7 Q. When you saw the inner crowd go together and the  8 two start to engage -- is that a fair way of  9 putting it?  10 A. Yes.  11 Q. What did you do then?  12 A. That's when I determined it was necessary to deploy  13 the pepper spray.  14 Q. And when you -- when you decided to then deploy the  15 pepper spray, was it aimed at those individuals in  16 that inner crowd?  17 A. At the -- yes, the entire area of the "X."  18 Q. You weren't trying to shoot the two specific people  19 you had identified?  20 A. I did not focus on anyone individually.  21 Q. Okay. I need to back up and ask you some general  22 questions because I don't really understand very  23 well the OC stuff. Okay?  24 A. Okay.  25 Q. I've seen it described as similar to a fire</p>

<p style="text-align: right;">Page 33</p> <p>1 extinguisher; is that accurate?</p> <p>2 A. That's correct.</p> <p>3 Q. And would it be about the size of a fire</p> <p>4 extinguisher?</p> <p>5 A. A small fire extinguisher, yes.</p> <p>6 Q. And what was the particular model that you have?</p> <p>7 A. I believe it's a Mark 46, but I'm not 100 percent</p> <p>8 sure on that. It would be signified MK-46 but the</p> <p>9 number is what I'm uncertain on.</p> <p>10 Q. And does that piece of equipment have more than one</p> <p>11 way to deploy pepper spray?</p> <p>12 A. No.</p> <p>13 Q. Does it spray it in a stream?</p> <p>14 A. No. It's a fog.</p> <p>15 Q. A fog pattern. So if you were trying to hit Alordo</p> <p>16 Bell and the other person directly, it would be</p> <p>17 hard to do?</p> <p>18 A. Correct.</p> <p>19 Q. You identified Alordo Bell. Do you know who the</p> <p>20 second individual was that was being held back?</p> <p>21 A. No, I do not.</p> <p>22 Q. And you never found that out?</p> <p>23 A. Correct.</p> <p>24 Q. Did that person leave the scene, that second</p> <p>25 person?</p>	<p style="text-align: right;">Page 35</p> <p>1 A. In my opinion, there were numerous people breaking</p> <p>2 the law that night. That group had been ordered</p> <p>3 numerous times to leave, which constituted</p> <p>4 trespass. So, you know, while there may be some</p> <p>5 people downwind from the spray that were affected,</p> <p>6 those in that group were committing a misdemeanor.</p> <p>7 Q. At what point did their actions become a</p> <p>8 misdemeanor?</p> <p>9 A. When they're on property that they have no</p> <p>10 contractual interest in and are told to leave and</p> <p>11 refuse to do so.</p> <p>12 Q. Now, you understand there's some time component</p> <p>13 required from you issuing a verbal command to when</p> <p>14 a person can reasonably do what you've ordered them</p> <p>15 to do. Would you agree?</p> <p>16 A. Yes.</p> <p>17 Q. What would be a reasonable time component to expect</p> <p>18 after you've verbally signified to leave the area</p> <p>19 for the crowd to disperse?</p> <p>20 A. 15 seconds. Do you mean fully disperse or to begin</p> <p>21 the process? I'm referring to beginning the</p> <p>22 process of leaving in 15 seconds.</p> <p>23 Q. So you think by your verbal command action becomes</p> <p>24 a criminal act within 15 seconds of you issuing</p> <p>25 that command?</p>
<p style="text-align: right;">Page 34</p> <p>1 A. I don't know.</p> <p>2 Q. Wasn't somebody you ever had any direct dealings</p> <p>3 with?</p> <p>4 A. Right. I didn't recognize them or wasn't able to</p> <p>5 identify who they were later.</p> <p>6 Q. When you deployed the pepper spray, what was your</p> <p>7 purpose?</p> <p>8 A. To disperse the crowd.</p> <p>9 Q. Did you consider going to apprehend the two</p> <p>10 specific individuals at that time?</p> <p>11 A. It crossed my mind, but as with any other</p> <p>12 decision-making process we do, it wasn't feasible</p> <p>13 at the time.</p> <p>14 Q. Why wasn't it feasible?</p> <p>15 A. Because of the danger it would have put myself and</p> <p>16 Officer Pieszchalski in.</p> <p>17 Q. Did you recognize that when you deployed the fog,</p> <p>18 the pepper spray, that you were going to hit</p> <p>19 innocent persons?</p> <p>20 MR. SCHMITT: Objection.</p> <p>21 A. When you say "innocent," that's -- I'm confused by</p> <p>22 that.</p> <p>23 Q. Fair enough. When I say "innocent," I mean</p> <p>24 somebody that was not breaking the law in any way</p> <p>25 at that time.</p>	<p style="text-align: right;">Page 36</p> <p>1 MR. SCHMITT: Objection.</p> <p>2 Q. To the extent that the people there do not follow</p> <p>3 your command immediately.</p> <p>4 MR. SCHMITT: Objection.</p> <p>5 A. Not in every case, but at that point, yes.</p> <p>6 Q. If everybody was trying to do what you wanted them</p> <p>7 to do, how long do you think it would take for the</p> <p>8 crowd to disperse?</p> <p>9 A. And be totally out of the lot?</p> <p>10 Q. Yes.</p> <p>11 A. Ten minutes.</p> <p>12 Q. So if everybody did exactly what you told them to</p> <p>13 do, it would take ten minutes for them to have</p> <p>14 gotten out?</p> <p>15 A. To exit the property, yes.</p> <p>16 Q. The quickest?</p> <p>17 A. I would think so.</p> <p>18 Q. You think 200 people could get in their cars and</p> <p>19 get out of a parking lot within ten minutes?</p> <p>20 A. I think so.</p> <p>21 Q. Approximately how many cars do you think were in</p> <p>22 the parking lot?</p> <p>23 A. Maybe 60. 50 to 60.</p> <p>24 Q. And as a percentage of the parking lot itself,</p> <p>25 about how much would you say was filled with</p>

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1 Q. Is that all you ever deployed towards that area?  
 2 A. Yes.  
 3 Q. And about how long of a spray or burst if you'd  
 4 call it?  
 5 A. If I had to guess, I would say one second.  
 6 Q. Okay. Again, I have no knowledge or understanding  
 7 of OC spray. Never seen it operated. So with that  
 8 in mind that I'm a dummy to this, try to explain to  
 9 me how that kind of burst -- what kind of area that  
 10 would have covered.  
 11 A. According to my training when you're dealing with  
 12 crowds -- and that's the reason the canister uses a  
 13 fog pattern as opposed to the straight stream like  
 14 what officers carry on their belt typically. It's  
 15 most effective if you go over the top of the crowd,  
 16 and then it basically just is allowed to rain down  
 17 on them. When I say "rain down," it's not a  
 18 completely liquid form. It is more of a fog, a  
 19 mist, but that's -- it's more effective that way,  
 20 and you're not individually targeting a person. So  
 21 the basic application would be to arc it over the  
 22 crowd just in a quick spray, and that's what was  
 23 done in this case.  
 24 Q. Did you issue any warnings that you were about to  
 25 spray the crowd before you did?

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1 A. Not specifically a warning about spray, no.  
 2 Q. Is that something you sometimes do?  
 3 A. Yes.  
 4 Q. Why didn't you do it in this circumstance?  
 5 A. There was no time.  
 6 Q. Why was there no time -- or how was there no time?  
 7 A. Typically in these circumstances we'll give the  
 8 commands to leave. When the crowd doesn't follow  
 9 those commands, we will notify them that, you know,  
 10 either they're going to be arrested, if there's no  
 11 canister. If we're going to use a canister, a lot  
 12 of times we'll notify them of that. Alordo Bell's  
 13 actions forced me to take action, and I wasn't able  
 14 to let them know that the spray was about to be  
 15 deployed.  
 16 Q. What did Alordo do specifically?  
 17 A. He broke free of the individuals that were  
 18 attempting to control him and charged at the other  
 19 individual.  
 20 Q. Prior to you deploying the pepper spray, was the  
 21 crowd antagonistic or in any way threatening toward  
 22 you or Officer Pieszchalski?  
 23 A. I don't remember anything specific. The crowd's  
 24 focus was on Alordo Bell and the other individual  
 25 and the people at the center of that circle.

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1 MR. SCHMITT: And, again, are you talking  
 2 about the inner crowd, or are you talking about --  
 3 Q. I'm talking about the inner crowd unless I tell you  
 4 different. In terms of how many people you think  
 5 you hit with the fog, could you give any reasonable  
 6 estimate?  
 7 A. Not accurately. In that circle, 40 people, maybe.  
 8 Q. Are there times where you deploy pepper spray in a  
 9 different manner other than above the crowd, for  
 10 instance, shooting it at their feet to give them a  
 11 warning or anything like that?  
 12 A. Not shooting at the feet. There have been  
 13 occasions where the spray wasn't -- was focused on  
 14 an individual similar to what a straight stream  
 15 would be but that was just because that was the  
 16 immediate tool available.  
 17 Q. Give me a sense of how far the fog sprays.  
 18 A. Somewhere in the area of ten feet.  
 19 Q. That'd be max?  
 20 A. Yes.  
 21 Q. So you were within ten feet of this inner crowd to  
 22 be able to hit them?  
 23 A. Yes.  
 24 Q. When did you first realize that you had hit Officer  
 25 Pieszchalski with the OC spray?

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1 A. After the event was over, we discussed it, and he  
 2 said he was affected by the spray, and I explained  
 3 to him that I was also.  
 4 Q. Was he upset about that?  
 5 A. No.  
 6 Q. Is that something common that your partner gets hit  
 7 with the spray as you deploy it?  
 8 A. It's common that everyone feels the effects of the  
 9 spray regardless if it's a canister or the small --  
 10 the small can on a belt. If the spray is deployed,  
 11 I mean, it seems that anyone in the area is going  
 12 to be affected by it.  
 13 Q. Under what circumstances pursuant to the practices  
 14 of the department are you supposed to use OC spray?  
 15 A. It's equivalent to utilizing a Taser. It's a less  
 16 lethal option to gain compliance.  
 17 Q. And it's meant to be pain compliance; is that  
 18 correct?  
 19 A. Correct.  
 20 Q. And also has the effect of causing fear and anxiety  
 21 in the people that are hit?  
 22 A. General discomfort is the way I would put it  
 23 because I -- you know, of course, we have -- anyone  
 24 who carries it has been exposed to it. We feel the  
 25 effects of it, that way we know the limitations.

<p style="text-align: right;">Page 45</p> <p>1 Q. Can cause gripping pain in certain individuals. Is 2 that fair to say? 3 A. Pain is very objective. I suppose that would be 4 possible. 5 Q. In any of your training, have you ever seen it 6 described as gripping pain? 7 A. No. 8 Q. Have you ever had any training on the OC canister? 9 A. Yes. 10 Q. When? 11 A. During the -- my time at the academy, the Southwest 12 Indiana Law Enforcement Academy. 13 Q. Between the time you exited the academy and the 14 time of this incident at the Scottish Rite, had you 15 had any other training on OC canisters? 16 A. Yes. There were updates given. I can't recall 17 specifics on those but -- during the in-services 18 and those types of things, we typically have those 19 updates. 20 Q. In my review of the CALEA reports -- are you 21 familiar with CALEA? 22 A. Yes. 23 Q. It was indicated in the report that in the two 24 years prior to 2010 there hadn't been OC training 25 performed. Were they wrong? Had you had some</p>	<p style="text-align: right;">Page 47</p> <p>1 to be aware of, medical problems that may develop 2 as a result of those physical conditions being 3 aggravated. Proper deployment, effective 4 deployment, you know, occurrences in which to use 5 it. Those are -- I mean, that's -- just off the 6 top of my head, those are the things that I can 7 recall. 8 Q. And what are the typical instances that they teach 9 you that you should use the pepper spray? 10 A. It's mainly designed for use in a situation where 11 you're trying to effect an arrest and you get that 12 discomfort. A lot of times it can be just a 13 distraction technique. Because of the discomfort 14 that it causes, it can be distracting enough for 15 you to gain the advantage enough to handcuff 16 someone. 17 In these crowd control instances, it -- I've 18 noticed that people who aren't directly involved or 19 aren't directly the aggressors tend to -- if they 20 feel the slightest amount of effect from it, will 21 disperse if they're ignoring our commands 22 otherwise, but, you know, those are typically the 23 cases in which we use it. It's considered an 24 intermediate type of a less than lethal weapon. 25 Q. Would you agree that that level of force, using the</p>
<p style="text-align: right;">Page 46</p> <p>1 training in that time frame? 2 A. I can't recall specifically in 2008. 3 Q. Would it be within your training -- or strike that. 4 Would it be within your personnel file to show 5 whatever training you've had on OC canister? 6 A. Should be, yes. 7 Q. If you wanted to go to the department and say, hey, 8 when's the last time I had training in OC canister, 9 who would you talk to? 10 A. Personnel in training. The personnel in the 11 training department. Probably Debbie Baird. 12 Q. Can you remember any of the in-service training 13 you've had as to OC canisters, who performed it, 14 where it was, when it was? 15 A. Typically at the time it was Sergeant Pugh, who is 16 now assistant chief. He was the less lethal 17 coordinator at the time, and he was typically the 18 one that handled those type of items. He was also 19 responsible for our initial training at the 20 academy. 21 Q. Would you describe for me in a general sense what 22 that training is? 23 A. It focuses on, again, the limitations of the pepper 24 spray, focuses on what it can cause, certain 25 conditions it can aggravate in individuals, things</p>	<p style="text-align: right;">Page 48</p> <p>1 OC canister, shouldn't be used if you could 2 accomplish your goal with a less forceful means? 3 MR. SCHMITT: Objection. 4 A. If there's an option available, yes. 5 Q. What other options are there generally? 6 A. Hands on control and verbal compliance. 7 Q. Anything else? 8 A. Typically, we -- you know, we will give verbal 9 orders. If those aren't effective, we will go 10 hands on, and if -- I mean, that's eventually going 11 to become effective but that's -- 12 Q. Isn't there varying degrees of the verbal, though? 13 That is to say you could say "leave." Yell it 14 louder. You can make it more specific to specific 15 individuals. You can say more specific threats of 16 you're going to be arrested if you don't leave. 17 You're going to be sprayed with pepper spray if you 18 don't leave, those sorts of things. 19 A. Yes, I would say there are degrees. 20 Q. Okay. And would you agree that in most 21 circumstances in these crowd situations you've 22 talked about that you do not have to deploy the OC 23 canister? 24 MR. SCHMITT: Objection. 25 A. There have been a number of crowds that we did not</p>



<p style="text-align: right;">Page 49</p> <p>1 have to do anything other than our presence to  2 control a crowd.  3 Q. I think also we mentioned earlier sometimes lights  4 and sirens can be effective at dispersing a crowd  5 as well?  6 A. That is a potential tool to use, yes.  7 Q. As well as being in the car and using the PA  8 system?  9 A. Yes.  10 Q. Are you aware of any way in which you could  11 effectuate a warning shot, so to speak, of OC  12 spray?  13 A. Typically, we don't do anything that's a warning  14 shot, whether it be from our pistol or anything  15 else because there may be unintended effects of  16 that, and warning shots aren't something we  17 typically employ.  18 Q. Did you take into account what I'll call collateral  19 damage, meaning the innocent bystanders that would  20 be hit with you using the pepper spray before you  21 deployed it that day?  22 MR. SCHMITT: Objection.  23 A. That was a consideration.  24 Q. And what did you consider?  25 A. It's -- we commonly know that when we deploy it, we</p>	<p style="text-align: right;">Page 51</p> <p>1 Q. Didn't have any indication to think anybody was  2 under the influence of drugs or alcohol at that  3 time?  4 MR. SCHMITT: Objection.  5 A. I didn't have the time to test anyone, but the  6 behavior I was seeing was consistent with people  7 who were under the influence of those type of  8 things.  9 Q. Explain to me the behavior that you were seeing.  10 A. The outward aggression. Those are all consistent  11 with people who are intoxicated or on substances.  12 That's one of the markers we see when -- when  13 someone is intoxicated, they tend to have the -- a  14 more aggressive attitude. So it was something that  15 I wasn't -- I did not rule out at that point.  16 Q. Do you know what the SOP is on use of force?  17 A. I've reviewed the SOP.  18 Q. What does it say?  19 A. I can't quote it verbatim. It just basically  20 specifies -- not necessarily when we can use force  21 but examples of situations that would indicate the  22 use of force to effect an arrest. That's basically  23 what it focuses on.  24 Q. Can you give me what examples they give?  25 A. No, I can't. I don't know if they're specific</p>
<p style="text-align: right;">Page 50</p> <p>1 will be affected, which I would consider myself an  2 innocent bystander as far as the circumstances go  3 here. We know that ahead of time, and it's -- we  4 have to weigh our options, and at this point, when  5 I saw the crowd begin to converge, the risk of me  6 not doing anything or continuing to do the same  7 thing was not having an effect; therefore,  8 something needed to change to control this crowd  9 before things got worse.  10 Q. What did you foresee happening if you didn't step  11 in?  12 A. Well, I've been involved in many of these crowd  13 control instances, of course, and typically, what I  14 see is if the crowd does not recognize our  15 authority to have them disperse, things will  16 typically get worse. An individual will usually  17 project themselves as, you know, the center of  18 attention, which, you know, usually results in a  19 confrontation between those individuals and turns  20 into a fight. Once the fight does happen, if we  21 allow that to go, it makes it more difficult for us  22 to get in and gain control once we've lost control.  23 Q. You didn't suspect any weapons at that point before  24 you deployed the pepper spray; is that correct?  25 A. I did not see any weapons.</p>	<p style="text-align: right;">Page 52</p> <p>1 examples, but it gives you areas where -- you know,  2 specifying to effect an arrest if force is needed,  3 use only the reasonable amount of force required to  4 do so.  5 Q. Would it be fair to say the minimum amount of force  6 needed?  7 A. I don't -- I don't recall if "minimum" is in there  8 or not.  9 Q. If you can't articulate the standard, how can you  10 abide by the standard when you're in the field?  11 MR. SCHMITT: Objection.  12 A. The standard is a guideline, and it -- it's  13 something that we -- we operate under it.  14 Obviously, cannot cover every circumstance in a  15 police officer's job functions, every task that's  16 required. That's why it says to use reasonable  17 amount of force. I believe the word is  18 "reasonable," not "minimum." Because there are --  19 there are times where the minimum would not be  20 effective. So -- but my understanding of the  21 policy is that that's -- that's what gives us the  22 authorization to use the reasonable amount of force  23 to effect an arrest or if there's a safety concern  24 such as in this one.  25 Q. Would it be fair to say then that the use of force</p>

<p style="text-align: right;">Page 65</p> <p>1 A. Maybe on occasion. I don't remember anything 2 specifically. 3 Q. What makes speech illegal, in your opinion? 4 A. When it's to the point that it disrupts other 5 people as far as, you know, whether it's the 6 volume. When it enters the realm of disorderly 7 conduct. Loud, loud behavior that -- 8 Q. Can you tell me what the elements of disorderly 9 conduct are? 10 A. Engaging in fighting, tumultuous conduct, you know, 11 disruptive behavior to the point of gathering the 12 attention of other people. I wouldn't be able to 13 quote it exactly but that's my understanding of 14 disorderly conduct. 15 Q. And you're aware that Judge Kiely specifically 16 ruled that the speech of Kivon Redd on that day was 17 protected free speech? 18 MR. SCHMITT: Objection. 19 A. That was my understanding of what the judge said. 20 Q. He's the judge. He's in charge of deciding what's 21 constitutional or not, isn't he? 22 A. That's correct. 23 Q. Your use of force was evaluated and you were 24 exonerated for your actions that day; is that 25 correct?</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. Okay. In what situation did that occur? 2 A. I don't recall anything specifically, but I know of 3 circumstances where it's happened. 4 Q. Do you know who? 5 A. Not off the top of my head. 6 Q. I mean, you just vaguely remember that, or do you 7 have a specific incident in mind you think it did 8 occur? 9 A. I can remember situations. I don't remember 10 officers specifically, but I can remember -- there 11 has been those cases. 12 Q. None in which you were involved? 13 A. Correct. 14 Q. And I don't mean you personally, but I mean -- not 15 you personally committing the violation but were 16 present when the violation occurred? 17 A. Correct. 18 Q. How would you define "reasonable force"? 19 A. The force that's necessary to effect the arrest. 20 Q. In this case there wasn't an arrest, though. 21 MR. SCHMITT: Objection. There was. 22 Q. Let me rephrase. There wasn't an arrest that you 23 were trying to effectuate at the time you deployed 24 the pepper spray; is that correct? 25 A. We would have made numerous arrests out of that</p>
<p style="text-align: right;">Page 66</p> <p>1 A. Correct. 2 Q. Do you know by what standards they viewed your 3 conduct? 4 A. As far as our code of conduct? 5 Q. Yes. 6 A. Usually what's -- what happens with the use of 7 force is it's reviewed to those standards, what 8 you're referring to earlier, the rules and 9 regulations, and they compare them -- they compare 10 our actions to those standards. If it's excessive 11 force, if it's neglect of duty, and when that 12 complaint is sent through, each one of those items 13 is evaluated, and if it falls under excessive 14 force, they review that excessive force standard 15 and then say whether or not you were justified. 16 I think there's three options. One was -- it 17 was sustained if you did in fact -- if the 18 complaint was sustained, and then there's 19 exonerated, and then -- I can't think of the term 20 for the third one, but you did what was stated in 21 the complaint but you were justified in doing so. 22 Q. Are you aware of any situation since you've been on 23 the force where another officer has been 24 disciplined for excessive force? 25 A. Yes.</p>	<p style="text-align: right;">Page 68</p> <p>1 crowd. When I -- that's part of the reason I had 2 confusion with the innocence when you used that. 3 If I would have had 50 officers there with a 4 transport wagon, I could have filled that wagon 5 with plenty of people. Like I said, I had given 6 them commands to leave. There were people that 7 were trespassing. There were people that were 8 acting in a disorderly manner. So I could have 9 made many arrests. I didn't have the manpower 10 necessary to do that safely for myself and Officer 11 Pieszchalski at the time. I could have made an 12 arrest on numerous individuals in that circle 13 before the pepper spray was ever deployed. 14 Q. Have you ever been given any specific training as 15 to crowd control? 16 A. When you say "specific," you're not talking about, 17 like, an hour long block of just strictly crowd 18 control? Is that what you're referring to or -- 19 Q. I really don't know. I mean, I'm not trying to 20 specify it as a time block, whether it be 21 15 minutes or an hour or a day. I mean, just any 22 specific crowd control training that -- 23 A. Yes. 24 Q. -- you can remember having? 25 A. Yes. We've been in the academy and then since</p>

<p style="text-align: right;">Page 69</p> <p>1 after with OC refresher. You know, that's</p> <p>2 typically -- you're going to use more OC in those</p> <p>3 situations generally. So that's when they discuss</p> <p>4 crowd control tactics.</p> <p>5 Q. And is there a normal, if there is such a thing,</p> <p>6 situation where you would use OC to control a</p> <p>7 crowd?</p> <p>8 A. I would call normal the instances that I've used it</p> <p>9 in the past and documented it.</p> <p>10 Q. And nobody has ever found your use of force to be</p> <p>11 unreasonable at any time?</p> <p>12 A. That's correct.</p> <p>13 Q. You've never been cited for any unreasonable</p> <p>14 force --</p> <p>15 A. Never.</p> <p>16 Q. -- while you've been working for the Evansville</p> <p>17 Police Department?</p> <p>18 A. That's correct.</p> <p>19 Q. And you've used pepper spray on several occasions,</p> <p>20 and it's been reviewed?</p> <p>21 A. Yes.</p> <p>22 Q. I think by your answers, in terms of what was a</p> <p>23 greater priority for you between dispersing the</p> <p>24 crowd and apprehending the combatants, your actions</p> <p>25 signify to me that the greater priority to you was</p>	<p style="text-align: right;">Page 71</p> <p>1 the majority of that crowd to make any movement</p> <p>2 towards a vehicle, towards the business, towards</p> <p>3 the sidewalk, anything.</p> <p>4 Q. Have you ever talked to Kivon Redd after the</p> <p>5 Scottish Rite incident?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Have you ever talked to any of the other people</p> <p>8 that were charged or any of the witnesses after</p> <p>9 that event?</p> <p>10 A. I may have had a dealing with Alordo Bell at some</p> <p>11 point but -- I think I saw Michael Fleming in a</p> <p>12 restaurant one time. I don't think we spoke at</p> <p>13 all.</p> <p>14 Q. Would you know who Kivon was if you saw him out and</p> <p>15 about?</p> <p>16 A. Possibly.</p> <p>17 Q. Seeings how not everybody has OC canisters issued</p> <p>18 to them, would you agree that you should be able to</p> <p>19 effectuate your job properly without OC canisters?</p> <p>20 A. When you say "properly," just like with any tool,</p> <p>21 whether it be the Taser, before it was introduced,</p> <p>22 arrests were made. And just like in this case, if</p> <p>23 we did not have those tools available, it would</p> <p>24 have put us in greater danger. It would have --</p> <p>25 part of the advantage of these type of tools,</p>
<p style="text-align: right;">Page 70</p> <p>1 dispersing the crowd. Would you agree with that?</p> <p>2 A. That's correct.</p> <p>3 Q. The fact that the crowd was basically teenagers as</p> <p>4 opposed to being at a bar or outside a bar with</p> <p>5 intoxicated adults, do you view that situation any</p> <p>6 different or should be handled in any different</p> <p>7 fashion?</p> <p>8 A. I don't remember having the consideration of them</p> <p>9 being teenagers. To be quite honest with you, when</p> <p>10 I walked into that crowd, it seemed like the</p> <p>11 typical age group of crowds we deal with at bars.</p> <p>12 I didn't make the distinction as far as it being</p> <p>13 teenagers or anything of that nature.</p> <p>14 Q. You do recognize that after you made these verbal</p> <p>15 commands to leave, that there is a certain amount</p> <p>16 of time that would be necessary for people to wait</p> <p>17 on the people they're riding with or the people</p> <p>18 that are driving them or to make communications of</p> <p>19 who is going where, that sort of thing?</p> <p>20 A. I understand that, and my expectation was to see</p> <p>21 people moving towards that direction, and I did not</p> <p>22 get that compliance. There were no vehicles where</p> <p>23 the group was. And by compliance, all I was asking</p> <p>24 was for people to walk that direction, and none of</p> <p>25 that was being done. There was no effort made on</p>	<p style="text-align: right;">Page 72</p> <p>1 pepper spray, Tasers is that we don't have to go</p> <p>2 hands on. When we go hands on, generally people</p> <p>3 are injured as a result of falling to the ground,</p> <p>4 whether strikes have to be thrown. In regards to</p> <p>5 these instances, even the Taser -- you know, the</p> <p>6 Taser leaves two small holes, two punctures. Other</p> <p>7 than that, there's no residual effects, typically.</p> <p>8 Same thing with the pepper spray. Once the</p> <p>9 effects pass, there are no other injuries. Yes, I</p> <p>10 think we could have probably made -- made the</p> <p>11 arrests that we made without those tools, but it</p> <p>12 definitely made it safer for us, cleared out the</p> <p>13 ones that were not part of the actual combatant</p> <p>14 group. So, you know, yes, I think it could have</p> <p>15 been done but definitely would have been more</p> <p>16 difficult for us and could have stood the chance of</p> <p>17 someone else being injured as well as ourselves.</p> <p>18 Q. Tell me what happened after Kivon was hit with the</p> <p>19 spray and you first heard him complain. Explain</p> <p>20 your interaction with him, if you could.</p> <p>21 A. He was -- he was very aggressive in his posture.</p> <p>22 He was clenching his fists and shouting. I</p> <p>23 remember him stomping his feet a couple of times,</p> <p>24 but with what he was shouting and the tone he was</p> <p>25 using, it definitely became something that I wanted</p>

<p style="text-align: right;">Page 73</p> <p>1 to focus on. It became -- I would call it  2 threatening, but there wasn't anything about  3 necessarily what exactly he was saying. It was the  4 manner he was saying it. I've seen this behavior  5 in people before who tend to -- you know, when they  6 do want to fight the police, there's usually two  7 methods to do that. They either decide they're  8 going to do it and they just start fighting with  9 us, or they kind of work themselves up into that  10 and tell themselves I know I'm right. You know,  11 they convince themselves that what they're about to  12 do is correct because we're wrong. They reinforce  13 that and get into that frenzy and then commit the  14 act, and that behavior was what I saw out of  15 Mr. Redd that night.  16 Q. So you don't think he said anything in terms of the  17 content of what he said that was illegal?  18 A. Not the content, no.  19 Q. And then once you did tell him to get on the  20 ground, what did he do?  21 A. He got on the ground and complied, I mean, after  22 numerous commands and -- actually, I had to point  23 the canister -- I told him I would spray him again,  24 I remember specifically saying that, and get on the  25 ground, and then he complied after I threatened him</p>	<p style="text-align: right;">Page 75</p> <p>1 A. I put a knee in the small of his back.  2 Q. Okay. What was the purpose of that?  3 A. To control his body.  4 Q. About how long did you have your knee in his back?  5 A. Again, I would say somewhere in the neighborhood of  6 30 seconds. I mean, that's a very rough estimate.  7 Q. Anybody, you, Pieszcalski, anybody else have their  8 knee, foot in Redd's back after he was handcuffed?  9 A. I think I remember Officer Pieszcalski doing the  10 same thing to control him, but I wouldn't be able  11 to say how long or anything, but yes, after I  12 initially cuffed him, yes.  13 Q. Did he try to get up at all?  14 A. Yes.  15 Q. After he was cuffed?  16 A. Yes. And that was the purpose for the knee.  17 Q. In terms of the internal affairs investigation,  18 I've seen where you gave a statement in that  19 investigation; is that correct?  20 A. Yes.  21 Q. And before giving your statement, were you provided  22 the statement of the other witnesses?  23 A. I don't believe I saw the statements of the  24 witnesses. I did see a copy of the complaint.  25 Q. Anything else that the IA provided you before you</p>
<p style="text-align: right;">Page 74</p> <p>1 again.  2 Q. You didn't have to use physical force to get him to  3 the ground; is that correct?  4 A. That's correct.  5 Q. And then once he was on the ground, about how long  6 did it take you to get him handcuffed?  7 A. Maybe 10 seconds, 15 seconds.  8 Q. Okay. So he didn't -- there wasn't any substantial  9 struggle on his part?  10 MR. SCHMITT: Objection.  11 A. In my consideration, yes, there was a substantial  12 struggle. He did not simply place his hands behind  13 his back as ordered. Officer Pieszcalski and I  14 had to fight for his hands. I remember  15 specifically pulling at his right arm several times  16 as he attempted to hide it underneath himself. You  17 know, that's a typical form of resistance that we  18 see when someone does not want to be handcuffed.  19 There was enough of a resistance that I had to  20 actually sit the canister down in order to gain  21 control of his hands.  22 Q. Did you see anybody put their knee or foot in  23 Kivon's back?  24 A. Yes.  25 Q. Okay. Who did that?</p>	<p style="text-align: right;">Page 76</p> <p>1 had -- before you provided your statement?  2 A. The only thing I recall is just the initial  3 complaint itself, what was stated by the  4 complainant.  5 Q. I want to ask you about other incidents in which  6 you've used pepper spray.  7 A. Okay.  8 Q. Documents were provided to me. It seems like, for  9 instance, in the year 2009 it looks like you used  10 pepper spray seven or eight times. Does that sound  11 about right?  12 A. Yes, that sounds correct.  13 Q. For instance, on a date reported 8-18 of 2012 in  14 the incident investigation report narrative I see  15 it stated, "At the time, several males in the crowd  16 began to surround us and protest the defendant  17 being taken in custody. I deployed the pepper  18 spray canister toward the group to keep them away."  19 Do you remember that incident?  20 A. Where was it at again?  21 Q. 317 Main. I assume that would be Hammerheads.  22 A. What was the date on that? Was it around  23 Christmas?  24 Q. 8-18-2012.  25 A. I don't remember that specifically.</p>

<p style="text-align: right;">Page 97</p> <p>1 spray or pepper balls. You had mentioned that</p> <p>2 there was some numerous tactical reasons why you</p> <p>3 would not show up with lights and the siren in this</p> <p>4 sort of situation, and I wondered if you could</p> <p>5 elaborate on that a bit.</p> <p>6 A. Most of the time our concern when we're told</p> <p>7 there's a fight is obviously the potential for</p> <p>8 someone being injured, and obviously, if there are</p> <p>9 injuries, there's going to be a suspect. And in</p> <p>10 this case, when I was told there was a fight, saw</p> <p>11 what looked to be a fight, I wanted to be able to</p> <p>12 see who my suspect could potentially be before --</p> <p>13 before I scared off the crowd.</p> <p>14 Q. So you're attempting to preserve the suspect and</p> <p>15 not have essentially your evidence leave the scene</p> <p>16 before you can get there. Would that be fair to</p> <p>17 say?</p> <p>18 A. Correct.</p> <p>19 Q. You were questioned by plaintiff's counsel that --</p> <p>20 did you have any knowledge to suggest that Mr. Redd</p> <p>21 was not leaving, and you rightly stated you can't</p> <p>22 know what his intent was, so no, but you also said</p> <p>23 that there were no cars in the north end of the</p> <p>24 lot. The inner crowd, we called it, was on the</p> <p>25 north end of the lot. The spray itself can only go</p>	<p style="text-align: right;">Page 99</p> <p>1 was the number of your own uses of pepper spray.</p> <p>2 It was talked about that this incident at Woody's</p> <p>3 you were off duty. Was that something you would</p> <p>4 often do --</p> <p>5 A. Yes.</p> <p>6 Q. -- work off duty? And it was always at locations</p> <p>7 that would typically be more high volume uses of</p> <p>8 pepper spray or pepper balls?</p> <p>9 A. Yeah. Typically, the bars that had the problems</p> <p>10 with crowds are the ones that hired officers off</p> <p>11 duty, and I did that quite often during those</p> <p>12 years.</p> <p>13 Q. In order to supplement your income?</p> <p>14 A. Yes.</p> <p>15 Q. So you were putting yourself in a position where</p> <p>16 this would more regularly take place, which would</p> <p>17 likely contribute to your increased number of</p> <p>18 usage?</p> <p>19 A. Yes.</p> <p>20 MR. ZIEMER: Okay. That's all I have.</p> <p>21 MR. SCHMITT: We --</p> <p>22 MR. MACER: I'll object to both of you asking</p> <p>23 questions.</p> <p>24 MR. SCHMITT: Yeah, I thought you would. I</p> <p>25 just have just one.</p>
<p style="text-align: right;">Page 98</p> <p>1 about ten feet. Is it safe to say that regardless</p> <p>2 of what was in his head, he was near the crowd, the</p> <p>3 fighting crowd, and he was not near the cars?</p> <p>4 A. Yes.</p> <p>5 Q. Once the verbal sparring started happening with</p> <p>6 Mr. Redd, he was -- he had moved farther south into</p> <p>7 the lot. He was behind you. Would it be fair to</p> <p>8 say that you were at that point in between Mr. Redd</p> <p>9 and the crowd that had been in the fighting</p> <p>10 altercation?</p> <p>11 A. Yes. I was between what was left of that crowd and</p> <p>12 Mr. Redd.</p> <p>13 Q. So when Mr. Redd continued to speak and a smaller</p> <p>14 crowd started forming with him, you were stuck in</p> <p>15 between two crowds?</p> <p>16 A. Yes.</p> <p>17 Q. So that -- did that contribute to your feeling of</p> <p>18 your own safety? You didn't want to be caught in</p> <p>19 between --</p> <p>20 A. I didn't know the intent of Mr. Redd at that point</p> <p>21 or anyone else in that crowd, for that matter, and</p> <p>22 that caused me to have to divide my attention</p> <p>23 between the two threats, you know, until proven</p> <p>24 otherwise.</p> <p>25 Q. Okay. The only other thing I wanted to touch on</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. MACER: Want to go off the record?</p> <p>2 (A discussion was held off the record.)</p> <p>3 Q. Mike, when you first arrived onto the scene, you've</p> <p>4 indicated you gave verbal directions to leave the</p> <p>5 lot. Were people complying with those orders?</p> <p>6 A. Yes. As I made my way into the lot, I, of course,</p> <p>7 contacted people, part of the outer group towards</p> <p>8 the building, began giving those commands to leave.</p> <p>9 The majority of the people that I walked past did</p> <p>10 comply with that. They began heading towards the</p> <p>11 exit of the lot once I was in the parking lot. I</p> <p>12 made the decision that if I made contact with, you</p> <p>13 know, a more resistant group that maybe wouldn't</p> <p>14 leave, that I was going to deal with them before</p> <p>15 putting myself between that group and then the</p> <p>16 larger group. So I wanted to see that I was</p> <p>17 gaining compliance as I was walking through before</p> <p>18 I got to that group, and that was -- that was</p> <p>19 occurring for the most part.</p> <p>20 MR. SCHMITT: None other.</p> <p>21 MR. MACER: No other questions.</p> <p>22 MR. SCHMITT: Mike, we're going to have you</p> <p>23 sign.</p> <p>24 (The deposition concluded at 3:34 p.m.)</p> <p>25</p>